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Writ Appeal No.226 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.07.2023

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

**Writ Appeal Nos.226 & 233 of 2015 &
M.P.No.1 of 2015**

1.State of Tamil Nadu
Rep., by Agricultural Production & Sect to Govt.,
Agriculture Department,
Fort St., George, Chennai – 9.

2.The Chief Engineer,
Agriculture Department,
Nandanam, Chennai – 35.

... Appellants in W.A.No.226 of 2015 &
Respondents in W.A.No.233 of 2015

Vs

S.Machisakkan ... Respondent in W.A.No.226 of 2015 &
Appellant in W.A.No.233 of 2015

PRAYER in W.A.No.226 of 2015: Writ Appeal filed under Clause 15 of
Letter Patent against the order dated 21.04.2014 made in W.P.No.17324 of
2010.



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PRAYER in W.A.No.233 of 2015: Writ Appeal filed under Clause 15 of Letter Patent against the order dated 21.04.2014 made in W.P.No.17324 of 2010 and directing the first respondent to consider the case of the petitioner as per the letter dated 30.05.2001 and give him promotion to the post of Assistant Executive Engineer with effect from 12.06.2001.

For Appellants : Mr.S.Silambanan AAG
Assisted by Mr.M.Murali GA
& respondent in W.A.No.233/2015

For Respondent : Mr.M.Ravi and
Appellant in W.A.No.226 of 2015

COMMON JUDGMENT

(Order of the Court was made by Mr.R.SURESH KUMAR.,J.)

Since these two Writ Appeals arising out of the order passed by the learned Judge dated 21.04.2014 made in W.P.No.17324 of 2010, with the consent of the learned counsel appearing for both sides, these Writ Appeals were heard together and are disposed of by this common order.

2. That the appellant in W.A.No.233 of 2015 who is the re-spondent in W.A.No.226 of 2015, hereinafter would be called as



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“employee”. The appellants in W.A.No.226 of 2015, who are the respondents in W.A.No.233 of 2015, hereinafter would be called as “employer”.

3.The employee was working as Assistant Engineer in the employer department, his next promotion avenue was Assistant Executive Engineer (AEE). For the said promotion for the year 1999-00, a panel was drawn taking the crucial date as 01.04.1999. Like that for the year 2000-01 taking the crucial date as 01.04.2000, a panel was drawn.

4.Insofar as the employee is concerned, there had been two disciplinary proceedings initiated against him, first proceedings was Rule 17(b) charge i.e., major penalty proceedings; second proceedings was Rule 17(a) charge i.e., minor penalty proceedings.

5.Insofar as the major penalty proceedings is concerned, the Government dropped such proceedings on 12.06.2001. Therefore, there was no 17(b) charge proceedings pending or cannot be construed to be pending



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against the employee.

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6.However, insofar as the 17(a) charge is concerned, it ended in a punishment of withholding the increment of the employee for one year period without cumulative period.

7.The said minor punishment was awarded on 15.02.2000, it was communicated on 24.02.2000.

8.In view of the said minor punishment of withholding the increment for one year period it was construed by the employer that there was a currency of punishment for both panel years i.e., 1999-00 as well as 2000-01 and therefore, for both the panel years, the name of the employee was not included and his promotion has been deferred.

9.However for the panel 2001-02, he was included and promotion was given.



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10.However, aggrieved over the non-inclusion of his name in the panel for 1999-00, he had approached the Writ Court and filed the afore-stated Writ Petition.

11.The Writ Court having considered the rival submissions and the rival case projected before the learned Judge passed the order on 21.04.2014, whereby he has given a direction to the employer to give him promotion to the post of AEE w.e.f, 12.06.2001, within a period of three months from the date of a receipt of a copy of the order.

12.By the said order, the promotion sought for by the employee for the year 1999-00 was negatived or not accepted. However, the Court accepted his plea to consider his name atleast for the year 2000-01 and in this context, he was directed to be considered from 12.06.2001, the relevancy of the date 12.06.2001 is nothing but dropping of the 17(b) proceedings of the Government on the said date.

13.Not satisfied with the said order, as by the said order, the learned



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Judge denied the inclusion of the employee's name for the promotion to the panel of 1999-00, the employee filed W.A.No.233 of 2015.

14.Also the employer aggrieved over the direction given to them to include him for the promotion from 12.06.2001 and to give such promotion had preferred the appeal in W.A.No.226 of 2015, i.e., how both the Intra Court Appeals have come up for hearing.

15.Insofar as the crucial date for the panel year is concerned 01.04.1999 and 01.04.2000, respectively, the punishment in minor charge proceedings was awarded to him on 15.02.2000, which was communicated on 24.02.2000 in respect of these dates, there has been no dispute.

16.But the stand of the employer was that the crucial date was 01.04.1999 and the panel for the year 1999-00 was issued on 26.07.2000 and the crucial date for the next year is 01.04.2000 and that panel was issued on 30.05.2001. Therefore, insofar as these two dates are concerned they relied upon the newly amended Rule i.e., Amendment 3(c) and 3(d) of



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the Tamil Nadu State and Subordinate Services Rules, which provides amendment and inserted Rule called (1-J) and (1-K), the relevant Rules are extracted hereunder for easy reference:-

(c) after item (1-I) as so substituted, the following item shall be inserted, namely:-

(1-J) No member of service shall be promoted or appointed to a post, if the member is undergoing any punishment imposed under rule 8 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, either on the crucial date or on the date of consideration for actual promotion.

(d) after item (1-J) as so inserted, the following item shall be inserted, namely:-

(1-K) Any punishment imposed on a member of service under Rule 8 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules shall take effect from the date on which the said punishment order is served to the member of service concerned and the name of such member of service shall not be considered for inclusion in the approved list



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until the said punishment is over.

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17.Relying upon these two Rules only such a inclusion for the promotion panel for the years 1999-00 and 2000-01 was denied to the employee.

18.Supporting the stand taken by the employer Mr.S.Silambanan, learned Additional Advocate General appearing for the State has submitted that as per Rule (1-J), no member of services shall be promoted or appointed to the post if the member is undergoing any punishment imposed under Rule 8 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules either on the crucial date or on the date of consideration of actual promotion.

19.Expanding further his argument, he would submit that the crucial date for 1999-00 is 01.04.1999 and the date of consideration of actual promotion was 26.07.2000. Therefore, either of the date, since can be taken and if any one of which falls under the currency of punishment, then promotion shall not be given. Therefore, the learned Additional Advocate General would contend that since the punishment was awarded on



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15.02.2000 and served on 24.02.2000, the panel date since falls on 26.07.2000 within the currency of punishment of one year, therefore he is not entitled for 1999-00.

20.The learned Additional Advocate General would further submit that like that in Rule (1-K), it is made clear that any punishment imposed under Rule 8 that was taken effect from the date on which the said punishment order is served to the member of service and the name of such member of service shall not be considered for inclusion in the approved list till such punishment is over.

21.Giving further expansion his arguments, the learned Additional Advocate General by quoting Rule (1-K) would submit that, insofar as the punishment awarded on 15.02.2000, since being withholding of increment for one year such a punishment can be implemented or shall be given effect to only on the next increment that falls on due which came up only on 01.10.2000, therefore on that date only such a punishment could have been implemented. If the said punishment is implemented on 01.10.2000, one



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year currency of the punishment shall be taken for one year i.e., till 01.10.2001. Within the said period since the crucial date as well as panel date i.e., 01.04.2000, as well as 30.05.2001, for the panel year 2000-01 falls under Rule 1(a), he is not eligible to claim promotion even for the panel year 2000-01. Therefore, the employer rightly denied such promotion to the employee for the two years and for 2001-02 promotion was considered and granted to him. However, this aspect has not been considered in a proper perspective by the learned Judge, therefore, his direction to the employer to consider him for the promotion for the year 2000-01 w.e.f., 12.06.2001, is against the Rule and therefore, the Appeal filed by the employer has to be allowed and the Appeal filed by the employee has to be dismissed, he contended.

22.On the contrary, Mr.M.Ravi, learned counsel appearing for the employee would submit that insofar as the punishment awarded against him dated 15.02.2000 is concerned, that currency of punishment would start only from the actual implementation i.e., on 01.10.2000 for one year period ultimately if he suffers the punishment i.e., upto 01.10.2001 only during the



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currency of punishment alone such a promotion could be denied. It cannot be extended either prior to the implementation of the punishment or after completion of the implementation of the punishment. Therefore, he would submit that insofar as the panel year 1999-00 is concerned, the crucial date was 01.04.1999 and the panel was issued on 26.07.2000, as both dates prior to 01.10.2000, the date on which, the punishment was implemented on the said two dates, there was no currency of punishment, hence the employee is entitled to get the promotion for the panel year 1999-00. Therefore, such a denial for giving promotion to the employee for the year 1999-00 and give direction to the employer to consider him for promotion only from 12.06.2001, is not in consonance with the settled legal position as well as the Rule position and therefore, the learned counsel appearing for the employee would seek indulgence of this Court to allow his Writ Appeal and dismiss the Appeal filed by the employer State.

23. We have given our anxious consideration to the submissions made by the learned counsel appearing for both sides and perused the materials placed before this Court.



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24.Insofar as the date that have been mentioned herein above are concerned absolutely there has been no dispute between the parties.

25.Now the only question is, whether the one year currency of punishment shall be taken from which date upto which date. During that period whether the crucial date as well as panel date of 1999-00 or 2000-01 would fall or any one of such year alone it falls have to be verified.

26.If we take up the Rule which has been very much relied upon by the learned Additional Advocate General, that Rule has been dated 24.02.2014, as per the said amendment since various amendments have been made in the said Rule, each amendment will have a different date of enforcement. Insofar as the two amendments which we are concerned, they are amendment 3(c) and amendment 3(d). Under amendment 3(c) clause (1-J) was inserted and amendment 3(d) clause (1-K) was inserted.

27.However if we see Rule 2 of the amendment, it makes clear that



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what is the date on which each amendment has come into effect. In this context Rule 3(c) shall be deemed to have come into force on the 1st October 1999. However, amendment 3(d) shall be deemed to have come into force on the 5th July 2001.

28. Therefore, insofar as the case of the employee is concerned since it relates to the panel year 1999-2000 for which the crucial date was 01.04.1999 and the panel was issued on 26.07.2000. Therefore, if at all the amended Rule has to be applied, the amendment 3(c) alone shall be made applicable, because it has come into effect from 1st October 1999, but not the amendment 3(d) as the same has come into effect only on 5th July 2001.

29. Therefore, the Rule (1-K) can be excluded from the purview of application on the employee whereas Rule (1-J) can very well be applied.

30. If Rule (1-J) is applied, its import nothing but there shall not be any promotion or appointment to a post, if the member is under going any



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punishment imposed under Rule 8 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, either on the crucial date or on the date of consideration for actual promotion.

31. Here the crucial date for 1999-00 is 01.04.1999, actual date of promotion is 26.07.2000. Insofar as these two dates are concerned, if we take up the currency of the punishment, the punishment has been imposed only on 15.02.2000.

32. In case, 15.02.2000, if the panel date is taken into account, the panel date is 26.07.2000, whereas the crucial date is 01.04.1999. Since the employer can choose either one of the date, the employer can take the date of panel i.e., 26.07.2000. Therefore, for the period 1999-00, the employee is not entitled to seek for promotion because on 26.07.2000, the date on which the panel was issued, there has been a currency of punishment as it starts from 15.02.2000. However, insofar as the panel year 2000-01 are concerned, the dates are 01.04.2000 and 30.05.2001. These two dates are



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only based on the 3(c) amendment, if it is applied either the crucial date can be taken or the panel date can be taken. 2000-01 panel is concerned, the crucial date is 01.04.2000, and the panel date is 30.05.2001.

33.If we take up these dates, the interpretation that is sought to be given by the learned Additional Advocate General, by quoting Rule (1-K) is that the punishment shall take effect from the date on which, the said punishment order is served to the member of service concerned and it shall not be considered for inclusion in the approved list until the said punishment is over. However, the said Rule (1-K) since cannot be applied such an interpretation given by the learned Additional Advocate General by quoting Rule (1-K) cannot also be applied in the present case. Therefore, if we applied Rule (1-J) alone on the two dates whether the currency of punishment is available or not is the question. The currency of punishment starts only from either 15.02.2000 or 24.02.2000 whereas the panel year 1999-00, the crucial date is 01.04.1999, but the panel date is 26.04.2000. Therefore, for either of the dates since falls within the currency period, he is not entitled for the promotion for 1999-00 whereas for the subsequent year



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certainly he would be entitled for the promotion i.e., year 2000-01.

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34. Therefore, the employee is entitled to get promotion for the year 2000-01, where since there has been a 17(b) proceedings that was pending at the time as the same was dropped by the order of the Government only on 12.06.2001, there was every justification on the part of the learned Judge to give a direction to the employer to consider him for promotion for the year 2000-01 w.e.f., 12.06.2001.

35. However, since the very 17(b) proceedings itself was dropped ultimately by the order of the Government, we must take it that the 17(b) proceedings was not at all initiated against him, therefore, that would not any way affect the promotion of the employee atleast for the year 2000-01. Therefore, from the eligible date of 2000-01, the employee is entitled to earn such promotion and therefore, such a promotion shall be provided to him.

36. Subsequently, the employer has given promotion only from the year 2001-02, therefore, that should be date back atleast one year from



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2000-01 and such a revised order shall be passed by the employer within a period of eight (8) weeks from the date of receipt of a copy of this order.

37. With the above directions, both the Writ Appeals are disposed of. Consequently, connected Miscellaneous Petition is closed. However, there shall be no order as to costs.

(R.S.K.,J.) (K.B., J.)
20.07.2023

Index: Yes
Speaking Order
Neutral Citation: Yes

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R.SURESH KUMAR., J.
and
K.KUMARESH BABU.,J.

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